

TEH CHOON SENG v. KHOO ENG KHOON

[O.C.J. (Abdul Hamid J.) March 16, 1977]

[Kuala Lumpur — Civil Suit No. 672 of 1975]

Damages — Accident — Defendant solely liable — Plaintiff suffered leg injuries — Permanent disability and shortening — Quantum.

The plaintiff, a lorry attendant, suffered leg injuries when he was involved in a road accident caused solely by the negligence of the defendant. Consequently, he was hospitalised for six months. He could not carry heavy loads and had difficulty in climbing up and down. He suffered permanent disabilities in the right leg. There was shortening and wasting of his right thigh and leg with restriction of movements at the knee and ankle.

Held: special damages of \$3,025 and general damages of \$27,000 (\$11,000 for loss of future earning and \$16,000 for pain and suffering) should be awarded to him.

CIVIL SUIT.*Lau Onn Chuen* for the plaintiff.*P. Devadas* for the defendant.

Abdul Hamid J.: On October 24, 1974 the plaintiff was travelling in motor lorry MD 667 as a lorry attendant. The motor lorry was driven by one Jantan bin Bachik along Seremban/Kuala Lumpur Road in the direction of Kuala Lumpur. The defendant was the driver of motor car ND 3889 travelling in the opposite direction.

An accident took place at or near the 19th milestone Seremban/Kuala Lumpur Road. At the time of the accident it was raining and the road was wet. Jantan testified for the plaintiff stating that the motor car that collided with his lorry had overtaken another car before the collision. The defendant's car was following other cars coming from the opposite direction and the collision occurred after it came out to overtake one of the cars. The collision took place at his side of the road. The plaintiff was then seated on rubber bales the lorry was conveying.

The silent evidence disclosed from the sketch plan corroborates the lorry driver's testimony. The brake mark of the lorry "E" to "F" seems to show that the lorry had braked while it was heading for the side of the road, in all probability, to avoid the oncoming car. The position of both the motor car and the motor lorry further confirms that the collision had taken place on the defendant's offside of the road.

The police report lodged by Jantan is consistent with his testimony in court.

On the other hand, the defendant stated that he was following a car and suddenly that car braked. He applied his brake and in so doing, the car skidded to the offside of the road and he failed to control his car. He denied he was trying to overtake the car in front of him.

In the first place, I cannot accept the defendant's testimony that he had skidded. There was no skid or brake mark on the road. I think the defendant cooked up the story in an attempt to show that the accident had not occurred as a result of his negligence. I accept the testimony of the lorry driver Jantan that the defendant was about to overtake the front car when the accident occurred. In any event, even as-

suming that the defendant did apply the brake to avoid knocking the front car and in so doing skidded, which testimony I do not accept, it is quite apparent that he was, in the circumstances, travelling too close to the front car particularly on a rainy day. It would further seem that he was travelling at such a speed, having regard to the condition of the road, he would have found it difficult to control the vehicle in the event that he should be forced to suddenly pull up. The skid even if it were true was therefore as a result of the defendant's sole negligence.

As for damages a sum of \$325 special damages was agreed. The court was to assess the loss of earning during the period the plaintiff was hospitalised and after discharge. I took into account the fact that the plaintiff was hospitalised for approximately six months and assessed in the sum of \$260 per month, a total of \$1,560. I also allowed another six months after discharge as he was still unfit to work at \$180 per month a total of \$1,140. The grand total for special damages awarded was \$3,025. I also awarded 3% interest with effect from the date of the accident.

As for general damages I assessed a sum of \$11,000 for future loss of earning as evidently the plaintiff's earning capacity would be substantially reduced. Dr. Mahmood Merican expressed the view that the plaintiff is not fit to carry heavy loads and to climb up and down. The disabilities to the right leg are likely to be permanent. There is shortening and also wasted right thigh and leg with restriction of movements at the knee and ankle.

For pain and suffering I assessed, in the light of previous awards of somewhat similar cases, a sum of \$16,000. I have considered very carefully the disabilities set out in Dr. Mahmood's report of December 31, 1976 in particular the shortening, the fractures and the permanent disabilities of his right leg bearing in mind in so doing the overlapping. I also awarded interest on general damages and costs.

*Order accordingly.*Solicitors: *Richard Ho; Devadas & Co.*